
By: **Delegates Moe, Frush, R. Baker, Boschert, Brown, Conroy, Griffith,
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Introduced and read first time: February 1, 2001

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Job-Related Substance Abuse Testing - Specimens - Collection**

3 FOR the purpose of adding saliva derived from the human body to the list of
4 specimens that may be used for job-related substance abuse testing; providing
5 that an employer may require a person to submit a certain specimen; requiring
6 an employer to follow certain procedures when collecting a specimen; requiring
7 an employer to collect a certain quantity of a specimen; and generally relating to
8 the collection of specimens used for job-related substance abuse testing.

9 BY repealing and reenacting, with amendments,

10 Article - Health - General

11 Section 17-214

12 Annotated Code of Maryland

13 (2000 Replacement Volume)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Health - General**

17 17-214.

18 (a) In this section the following words have the meanings indicated.

19 (1) "Alcohol or controlled dangerous substance testing" means a
20 procedure used to determine whether or not a specimen contains a controlled
21 dangerous substance or alcohol.

22 (2) "Certification" means the approval granted by the Department for a
23 laboratory to engage in job-related alcohol or controlled dangerous substance testing.

24 (3) "Controlled dangerous substance" has the meaning stated in Article
25 27, § 277 of the Code.

1 (4) "Job-related" means any alcohol or controlled dangerous substance
2 testing used by an employer for a legitimate business purpose.

3 (5) "Laboratory" means a facility or other entity that conducts
4 job-related alcohol or controlled dangerous substance testing.

5 (6) "Specimen" means:

6 (i) Blood derived from the human body;

7 (ii) Urine derived from the human body; [or]

8 (iii) Hair derived from the human body as provided in subsection
9 (b)(2) of this section; OR

10 (IV) SALIVA DERIVED FROM THE HUMAN BODY.

11 (A-1) (1) AN EMPLOYER MAY REQUIRE THAT A PERSON SUBMIT TO THE
12 EMPLOYER A SPECIMEN TO BE TESTED FOR JOB-RELATED REASONS FOR THE USE
13 OR ABUSE OF ANY CONTROLLED DANGEROUS SUBSTANCE OR ALCOHOL.

14 (2) AN EMPLOYER COLLECTING A SPECIMEN SHALL EMPLOY QUALITY
15 ASSURANCE AND CHAIN OF CUSTODY PROCEDURES THAT INCLUDE:

16 (I) COLLECTING A SPECIMEN IN A SEALED CONTAINER THAT HAS
17 A NONRESEALABLE CLOSURE OR AN EVIDENTIARY TAPE THAT ASSURES DETECTION
18 OF ANY TAMPERING;

19 (II) COLLECTING, HANDLING, STORING, AND SHIPPING A
20 SPECIMEN IN A MANNER THAT:

21 1. MAINTAINS THE SPECIMEN'S IDENTITY,
22 CONFIDENTIALITY, AND PHYSICAL INTEGRITY; AND

23 2. PRECLUDES CONTAMINATION OF THE SPECIMEN; AND

24 (III) DOCUMENTING EACH TIME A PERSON ACCESSES OR
25 TRANSFERS THE SPECIMEN.

26 (3) AN EMPLOYER COLLECTING A SPECIMEN SHALL COLLECT A
27 QUANTITY SUFFICIENT TO PERFORM AN INITIAL SCREENING TEST, A
28 CONFIRMATION TEST, AND AN INDEPENDENT TEST.

29 (b) (1) An employer who requires any person to be tested for job-related
30 reasons for the use or abuse of any controlled dangerous substance or alcohol shall:

31 (i) Have the specimen tested by a laboratory that:

32 1. Holds a permit under this subtitle; or

1 (ii) Within 30 days from the date the test was performed.

2 (d) (1) A person who is required to submit to job-related testing, under
3 subsection (b) of this section, may request independent testing of the same specimen
4 for verification of the test results by a laboratory that:

5 (i) Holds a permit under this subtitle; or

6 (ii) If located outside of the State, is certified or otherwise approved
7 under subsection (e) of this section.

8 (2) The person shall pay the cost of an independent test conducted under
9 this subsection.

10 (e) (1) The Department of Health and Mental Hygiene shall adopt
11 regulations governing the certification of laboratories that conduct job-related alcohol
12 or controlled dangerous substance testing.

13 (2) In addition to any other laboratory standards, the regulations shall:

14 (i) Require that the laboratory comply with the guidelines for
15 laboratory accreditation, if any, as set forth by the College of American Pathologists,
16 the U.S. Health Care Financing Administration (HCFA), or any other government
17 agency or program designated to certify or approve a laboratory that is acceptable to
18 the Secretary;

19 (ii) Require that a laboratory performing confirmation tests, for
20 controlled dangerous substances or alcohol be inspected and accredited in forensic
21 drug analysis by the College of American Pathologists, the U.S. Health Care
22 Financing Administration (HCFA), or any other government agency or program
23 designated to inspect and accredit a laboratory that is acceptable to the Secretary;

24 (iii) Require that, if the laboratory performs job related drug testing,
25 the laboratory be a participant in a program of proficiency testing of drug screening
26 conducted by an organization acceptable to the Secretary;

27 (iv) Require that the laboratory comply with standards regarding
28 cutoff levels for positive testing that are established by the United States Department
29 of Health and Human Services or established by the Secretary as mandatory
30 guidelines for workplace drug testing programs; and

31 (v) Include procedures for annual recertification and inspection.

32 (f) This section does not apply to:

33 (1) Alcohol or controlled dangerous substance testing of a person under
34 arrest or held by a law enforcement or correctional agency;

35 (2) Alcohol testing procedures conducted by a law enforcement or
36 correctional agency on breath testing equipment certified by the State Toxicologist; or

1 (3) Controlled dangerous substance testing by a laboratory facility of a
2 law enforcement or correctional agency that maintains laboratory testing standards
3 comparable to the standards in this section.

4 (g) This section applies to job-related alcohol and controlled dangerous
5 substance testing of any person, including preemployment applicants, employees, and
6 contractors.

7 (h) (1) Except as provided in paragraph (2) of this subsection, in the course
8 of obtaining information for, or as a result of, conducting job-related alcohol or
9 controlled dangerous substance testing for an employer under this section, a
10 laboratory, a physician, including a physician retained by the employer, or any other
11 person may not reveal to the employer information regarding:

12 (i) The use of a nonprescription drug, excluding alcohol, that is not
13 prohibited under the laws of the State; or

14 (ii) The use of a medically prescribed drug, unless the person being
15 tested is unable to establish that the drug was medically prescribed under the laws of
16 the State.

17 (2) The prohibitions against disclosure of information under paragraph
18 (1) of this subsection do not apply to the extent that they prevent a person from
19 complying with the applicable provisions of the federal Commercial Motor Vehicle
20 Safety Act of 1986 and the federal Motor Carrier Safety Regulations.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2001.